HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Revision No. 7-D of 2003

Irshad ……Revisionist

Vs.

State of U.P. and other …….Respondents

AND

Criminal Revision No. 8-D of 2003

Shamshad ……Revisionist

State of U.P. and other …….Respondents

Hon'ble Irshad Hussain, J.

Heard Sri S.K.Jain learned counsel for the revisionist and Sri Arvind Vashisht learned counsel for the respondent no.2.

Both these petitions/revisions under section 397 read with 401 of the Code of Criminal Procedure (for short 'Code') and section 19(4) of the Family Court Act, 1986 have been preferred against the impugned orders dated 11.3.2003 passed by the Principal Judge, Family Court, Haridwar whereby both the revisionists in their respective cases were directed to pay Rs. 5000/- as expenses of the litigation and further to pay Rs. 1000/- per month as interim maintenance to the respondent-wife. As is evident from the impugned orders, it has been shown to have been passed by the consent of the parties but this has been vehemently challenged by the revisionists on the ground that neither any consent has been given nor any compromise has been field in the proceedings. The revisionists also dispute their presence as well as their thumb impressions which are against the orders passed in the order-sheets of the two cases. Without entering into the controversy as to whether the orders bear the thumb impressions or not, it is of significance that against the application for interim maintenance objections have not been field by the revisionists. Normally, when a petition is decided on merit the opposite party is required to field objections in writing and this has not been done in these cases. Therefore, it can safely be accepted that the fair opportunity has not been given to the revisionists to contest the applications for interim maintenance as well as for expenses of the litigation. Mere mentioning that the orders are passed by the consent of the parties could not be taken

that the orders were passed after compromise between the parties as regards the amount of maintenance and expenses of the litigation. Although it had been confessed on behalf of the respondent-wife that the revisionists were present at the time of passing of the order but keeping in view the observations that the revisionists were not given opportunity to file objections in writing, it will be in the interest of justice that these orders be set aside and the matter be directed to be heard afresh according to law after giving opportunities to both the parties.

In view of above, both the revisions are allowed and the impugned orders dated 11.3.2003 is both the case are set aside. The learned Principal Judge is directed to decide the applications according to law after giving opportunity to the revisionists to file the objections against the applications for interim maintenance etc. Since the respondent-wife have to bear the expenses to maintain themselves as they are residing separately reasonable interim maintenance may be provided by this order itself.

Considering the totality of these cases and the occupation of the revisionists, it is directed that till the disposal of the applications for interim maintenance and grant of expenses of the litigation, both the revisionists shall pay Rs. 750/- each to the respondents per month. The learned Principal Judge, Family Court shall not be guided by the interim maintenance so provided while deciding the applications on merit. It is also directed that the matter shall be decided expeditiously within a period of one month from the date of receipt of the copy of this order. It is further directed that the revisionists shall file objections within ten days from today.

(Irshad Hussain, J.)

Date 23.4.2004
Rawat